



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

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**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
E.T. GRESHAM COMPANY INC.
FOR
BUILDING 0841
Virginia Pollutant Discharge Elimination System Registration No.
VAR10I887**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§ 62.1-44.15, 62.1-44.15:25, and 62.1-44.15:48, between the State Water Control Board and E.T. Gresham Company Inc., regarding Building 0841 located on Armed Forces Experiment Training Activity-Camp Peary in York County, Virginia, for the purpose of resolving certain violations of the State Water Control Law and the applicable regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "2014 Permit" means the General VPDES Permit for Discharges of Stormwater from Construction Activities, No. VAR10, promulgated at 9 VAC 25-880-70, which was issued under the State Water Control Law, the VSMP Regulations, and the General Permit Regulation on July 1, 2014 and which expires on June 30, 2019.

2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. "Construction activity" means any clearing, grading or excavation resulting in land disturbance of equal to or greater than one acre, or disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one acre.
4. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
5. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
6. "E.T. Gresham" means E.T. Gresham Company Inc., a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. E.T. Gresham is a "person" within the meaning of Va. Code § 62.1-44.3.
7. "General Permit Regulation" means the General VPDES Permit for Discharges of Stormwater from Construction Activities, 9 VAC 25-880-1 et seq.
8. "Land disturbance" or "land-disturbing activity" means a man-made change to the land surface that potentially changes its runoff characteristics including clearing, grading, or excavation, except that the term shall not include those exemptions specified in Va. Code § 62.1-44.15:34.
9. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
10. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
11. "Registration Statement" means a registration statement for coverage under the 2014 Permit.
12. "Site" means the Building 0841 located on Armed Forces Experimental Training Activity-Camp Peary in York County, Virginia, from which discharges of stormwater associated with construction activity occur.
13. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1 of the Va. Code.
14. "State Waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.

15. "Stormwater" means precipitation that is discharged across the land surface or through conveyances to one or more waterways and that may include stormwater runoff, snow melt runoff, and surface runoff and drainage. Va. Code § 62.1-44.15:24.
16. "Stormwater management plan" means a document or series of documents containing material describing methods for complying with the requirements of a VSMP or the VSMP Regulations. 9 VAC 25-870-10.
17. "TRO" means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.
18. "Virginia Stormwater Management Act" means Article 2.3 (§ 62.1-44.15:24 et seq.) of Chapter 3.1 of Title 62.1 of the Va. Code.
19. "Va. Code" means the Code of Virginia (1950), as amended.
20. "VAC" means the Virginia Administrative Code.
21. "VPDES" means Virginia Pollutant Discharge Elimination System.
22. "VSMP" means the Virginia Stormwater Management Program, which is a program approved by the Soil and Water Conservation Board after September 13, 2011, and until June 30, 2013, or the State Water Control Board on and after June 30, 2013, that has been established by a VSMP authority to manage the quality and quantity of runoff resulting from land-disturbing activities and shall include such items as local ordinances, rules, permit requirements, annual standards and specifications, policies and guidelines, technical materials, and requirements for plan review, inspection, enforcement, where authorized in this article, and evaluation consistent with the requirements of this article and associated regulations. Va. Code § 62.1-44.15:24.
23. "VSMP authority" means an authority approved by the Board after September 13, 2011, to operate a VSMP or, until such approval is given, the Department. An authority may include a locality; state entity, including the Department; federal entity; or for linear projects subject annual standards and specifications in accordance with subsection B of § 62.1-44.15-31, electric, natural gas, and telephone utility companies, interstate and intrastate natural gas pipeline companies, railroad companies, or authorities created pursuant to § 15.2-5102. Va. Code § 62.1-44.15:24.
24. "VSMP Regulations" means the Virginia Stormwater Management Program (VSMP) Regulations, 9 VAC 25-870-10 et seq.

SECTION C: Findings of Fact and Conclusions of Law

1. E.T. Gresham is the operator of the Site located in York County, Virginia, from which stormwater associated with construction activity is discharged.

2. DEQ is the VSMP authority for the Site.
3. Stormwater from construction activities at the Site is discharged to the York River, which is a surface water located wholly within the Commonwealth and is a "state water" under the State Water Control Law.
4. The York River is located in the York River Basin which is subject to a Total Maximum Daily Load (TMDL) for nutrients and sediment.
5. On September 29, 2016, DEQ received a registration statement for coverage under the 2014 Permit from E.T. Gresham. On October 12, 2016, DEQ informed E.T. Gresham that the submittal was incomplete and coverage under the 2014 Permit would not be issued until erosion and sediment control and stormwater management plans had been submitted, reviewed, and approved by DEQ. On June 19, 2017, DEQ received a new registration statement with proposed erosion and sediment control and stormwater management plans. On October 16, 2017, the plans were approved by DEQ. However, DEQ did not issue 2014 Permit coverage because E.T. Gresham had not paid the permit application fee. Following payment of the application fee, DEQ issued coverage under the 2014 Permit to E.T. Gresham on November 27, 2017.
6. During an inspection on August 15, 2017, DEQ staff visited the Site and observed that land-disturbing activities greater than one acre have occurred at the Site in an area subject to stormwater runoff. E.T. Gresham had not been issued coverage under the 2014 Permit, and no other certificate or permit was issued for the discharge of stormwater from construction activities at the Site. E.T. Gresham had not obtained VSMP authority approval to begin land disturbance.

Va. Code § 62.1-44.15:34(A) states: "A person shall not conduct any land-disturbing activity until he has submitted a permit application to the VSMP authority that includes a state VSMP permit registration statement, if such statement is required, and, after July 1, 2014, a stormwater management plan or an executed agreement in lieu of a stormwater management plan, and has obtained VSMP authority approval to begin land disturbance."

Va. Code §§ 62.1-44.15:24 and -44.15:34 define "land-disturbing activity" and describe regulated land-disturbing activities (including exemptions), respectively."

7. During the August 15, 2017 inspection, it was noted that an approved stormwater management plan was not at the Site. After the inspection, DEQ conducted a file review which revealed that DEQ had not approved a stormwater management plan for the Site.

Va. Code § 62.1-44.15:34(A) states: "A person shall not conduct any land-disturbing activity until he has submitted a permit application to the VSMP authority that includes a state VSMP permit registration statement, if such statement is required, and, after July 1, 2014, a stormwater management plan or an executed agreement in lieu of a stormwater management plan, and has obtained VSMP authority approval to begin land disturbance."

9 VAC 25-870-54(C) states: "A stormwater management plan consistent with the requirements of the Virginia Stormwater Management Act and regulations must be designed and implemented during construction activities. Prior to land disturbance, this plan must be approved by the VSMP authority."

8. During the August 15, 2017 inspection, it was noted that an approved erosion and sediment control plan was not at the Site. After the inspection, DEQ conducted a file review which revealed that DEQ had not approved an erosion and sediment control plan for the Site.

Va. Code § 62.1-44.15.55 states "Except as provided in § 62.1-44.15.56 for state agency and federal agency land-disturbing activities, no person shall engage in any land disturbing activity until he has submitted to the VESCP authority an erosion and sediment control plan for the land-disturbing activity and the plan has been reviewed and approved."

9 VAC 25-870-54(B) states: "An erosion and sediment control plan consistent with the requirements of the Virginia Erosion and Sediment Control Law and regulations must be designed and implemented during construction activities. Prior to land disturbance, this plan must be approved by either the VESCP authority or the department in accordance with the Virginia Erosion and Sediment Control Law and attendant regulations."

9. During the August 15, 2017 inspection, it was noted that temporary stabilization was not applied within seven days to denuded areas in the lay down area that remained dormant for longer than fourteen days. An infiltration basin on site had denuded side slopes that were dormant for longer than fourteen days and temporary stabilization had not been applied within seven days.

9 VAC 25-840-40(1) states: "Permanent or temporary soil stabilization shall be applied to denuded areas within seven days after final grade is reached on any portion of the site. Temporary soil stabilization shall be applied within seven days to denuded areas that may not be at final grade but will remain dormant for longer than 14 days. Permanent stabilization shall be applied to areas that are to be left dormant for more than one year."

9 VAC 25-870-54(B) states: "An erosion and sediment control plan consistent with the requirements of the Virginia Erosion and Sediment Control Law and regulations must be designed and implemented during construction activities. Prior to land disturbance, this plan must be approved by either the VESCP authority or the department in accordance with the Virginia Erosion and Sediment Control Law and attendant regulations."

10. During the August 15, 2017 inspection, it was noted that a stockpile was not protected with sediment trapping measures nor had it been stabilized.

9 VAC 25-840-40(2) states: "During construction of the project, soil stock piles and borrow areas shall be stabilized or protected with sediment trapping measures. The

applicant is responsible for the temporary protection and permanent stabilization of all soil stockpiles on site as well as borrow areas and soil intentionally transported from the project site.”

9 VAC 25-870-54(B) states: “An erosion and sediment control plan consistent with the requirements of the Virginia Erosion and Sediment Control Law and regulations must be designed and implemented during construction activities. Prior to land disturbance, this plan must be approved by either the VESCP authority or the department in accordance with the Virginia Erosion and Sediment Control Law and attendant regulations.”

11. During the August 15, 2017 inspection, it was noted that sediment from construction vehicles had been tracked onto the paved road.

9 VAC 25-840-40(17) states: “Where construction vehicle access routes intersect paved or public roads, provisions shall be made to minimize the transport of sediment by vehicular tracking onto the paved surface. Where sediment is transported onto a paved or public road surface, the road surface shall be cleaned thoroughly at the end of each day. Sediment shall be removed from the roads by shoveling or sweeping and transported to a sediment control disposal area. Street washing shall be allowed only after sediment is removed in this manner. This provision shall apply to individual development lots as well as to larger land-disturbing activities.”

9 VAC 25-870-54(B) states: “An erosion and sediment control plan consistent with the requirements of the Virginia Erosion and Sediment Control Law and regulations must be designed and implemented during construction activities. Prior to land disturbance, this plan must be approved by either the VESCP authority or the department in accordance with the Virginia Erosion and Sediment Control Law and attendant regulations.”

12. Based on the results of the August 15, 2017 inspection, the Board concludes that E.T. Gresham violated Va. Code § 62.1-44.15:34(A), § 62.1-44.15.55, 9 VAC 25-870-54(C), 9 VAC 25-870-54(B), 9 VAC 25-840-40(1), 9 VAC 25-840-40(2), and 9 VAC 25-840-40(17), as described in paragraphs C(6) through (11) of this Order.
13. TRO issued a Notice of Violation for the violations noted above as follows: NOV No. TRO-17-003, issued September 12, 2017.
14. On September 25, 2017, Department staff met with representatives of E.T. Gresham to discuss the violations.
15. E.T. Gresham has submitted documentation that verifies that the violations as described in paragraphs C (7), (8), (10), and (11), above, have been corrected.
16. On November 27, 2017, DEQ issued coverage under the 2014 Permit to E.T. Gresham, resolving violation C (6).

17. On November 29, 2017, DEQ conducted an inspection of the Site and documented that the violations described in paragraph C (9), above, have been corrected.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, 62.1-44.15:25, and 62.1-44.15:48, the Board orders E.T. Gresham and E.T. Gresham agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$8,475 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

E.T. Gresham shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Stormwater Management Fund. If the Department has to refer collection of moneys due under this Order to the Department of Law, E.T. Gresham shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of E.T. Gresham for good cause shown by E.T. Gresham, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 et seq., after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in NOV No. TRO-17-003 dated September 12, 2017. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, E.T. Gresham admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. E.T. Gresham consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.

5. E.T. Gresham declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by E.T. Gresham to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. E.T. Gresham shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. E.T. Gresham shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. E.T. Gresham shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.

10. This Order shall become effective upon execution by both the Director or his designee and E.T. Gresham. Nevertheless, E.T. Gresham agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
- a. The Director or his designee terminates the Order after E.T. Gresham has completed all of the requirements of the Order;
 - b. E.T. Gresham petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to E.T. Gresham.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve E.T. Gresham from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by E.T. Gresham and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of E.T. Gresham certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind E.T. Gresham to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of E.T. Gresham.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, E.T. Gresham voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 5 day of March, 2018.


Jefferson Reynolds, Enforcement Director
Department of Environmental Quality

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E.T. Gresham Company Inc. voluntarily agrees to the issuance of this Order.

Date: 1/12/18

By: [Signature]

(Person)

VICE PRESIDENT

(Title)

E.T. Gresham Company Inc.

Commonwealth of Virginia

City/County of Norfolk

The foregoing document was signed and acknowledged before me this 15th day of

Jan.
VP

, 2018, by

Richard W. Gresham

who is

of E.T. Gresham Company Inc., on behalf of the corporation.

[Signature]
Notary Public

213234
Registration No.

My commission expires: July 31, 2020

Notary seal:



